

## GLASS CEILING AND THE LATIN AMERICAN LAW FIRMS

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**Resumo:** O presente estudo tem como objeto analisar as razões pelas quais as mulheres advogadas são sub-representadas nas posições de comando dentro dos maiores escritórios de advocacia da América Latina, por meio da observação das diferentes teorias econômicas e sociais que tentam explicar esse fenômeno. A teoria do “capital humano” e a teoria do “papel social” são abordadas, visando a promover a compreensão da situação atual vivida nos escritórios. Além disso, conceitos de segregação, discriminação, do efeito conhecido como “teto de vidro” ou “glass ceiling” e os estereótipos sexuais são também desenvolvidos com o fim de aplicá-los ao caso prático, objeto deste trabalho.

**Palavras-chave:** Gênero, América Latina, Escritórios de Advocacia, Segregação.

**Abstract:** This paper intends to analyze why female lawyers are underrepresented at the top level positions of the big Latin American law firms, by studying the different social-economic theories that could explain this phenomenon. The “human capital theory” and the “gender-role socialization theory” are invoked in the present work with a view to understand the actual situation of law firm’s environment. Besides that, concepts of segregation, discrimination, glass ceiling effect and sex stereotypes are also developed and applied to the case object of the present study.

**Keywords:** Gender, Latin America, Law Firms, Glass Ceiling.

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## INTRODUCTION

Although Latin American's law schools for years have been graduating classes that are almost split between men and women, or in some cases have more women than men, and even though law firms have been absorbing new professional in large numbers, there is a curious phenomenon happening to most female lawyers after they ascend to the midlevel ranks positions: they disappear. This situation also can be observed in developed countries, as United States, which for 2 decades has been working on policies to equalize men and women at Law school graduation, supposing that it would cause partnerships to equalize as well. But disparity still remains.

In 1980 the law firms around the United States began a broad consolidation wave which expanded the global scope of their law firms, developing the method of "billable hours" to achieve the higher performances of the individual lawyers. Voracity, news media and profit per partner were the key words of such firms, which have their boom in the 1990's and continue today. This pattern was copied by Latin American countries. (BONELLI *et al.*, 2008). A few women could enter this atmosphere and even those few who did it, noted that male lawyers enjoyed some distinct advantages, basically related to the simple facts that the top level positions of most firms and also at academic environment were more men dominated (O'BRIEN, 2006).

This situation encompasses the theory of the "social capital" (BONELLI *et al.*, 2008), which can be defined as the networking and business development opportunities, which consists on a football game or through an invitation for a casual after-work drink with a male client or boss. Social capital also has a close connection with the idea of having a mentor. As long as most of the partners of the biggest law firms are men they are likely to mentor other men, trying to avoid any kind of rumors that could appear by mentoring a young female professional. With very little help and no mentors is easy to understand why few women ascend.

According to the New York Times, a 2001 study made by Catalyst, a New York research firm that study women's experiences in various workplaces, indicate that most male lawyers "don't see a lack of mentoring and networking opportunities — or commitments to family and personal responsibilities — as significant barriers to women's advancement" (O'BRIEN, 2006). The coordinator of the research also believes that men are not aware of women situation and that it should be considered that the firms are a male-dominated place and because of it they are less receptive to accept "challenges of work-life balance".

Hence, the law firms are an interesting study case to analyze "glass ceiling" issues. The glass ceiling phenomenon gives an illusion of equity on careers opportunities, but it obstructs the access of women to top level positions, keeping the female lawyers at activities that do not provide them with the necessary basis to achieve the most valued and powerful positions. This paper intends to analyses and comment the gender-based situation of Latin American Law firms, by developing the following topics: 1) historical background of the profession in Latin America; 2) study of the "glass ceiling" phenomenon and its derivatives into the law firms; and 3) suggestions of policies to promote more equity for men and women at law firms environment.



## HISTORICAL BACKGROUND

According to a report of the International Labour Organization, during the 1980s and 1990s women's participation in labour markets worldwide grew substantially (ILO, 2007). Until 1990, Latin American lawyers were concentrated in small or medium law firms with women's little participation. But the increasing of graduation courses jointly with the privatization era caused, especially in Brazil, a "boom" on the business law sector as well as some related new legal areas. This context promoted the growth of said small and medium law firms, in order to adapt themselves to the globalization demands, resulting the hiring of more qualified professionals to take care of the legal interests of their new clients. This transition was based on the United States' patterns of organization and legal culture (BONELLI *et al.*, 2008).

As a general regional transition, Latin America completely changed their job organization, replacing their traditional small and concentrated law firms to big organizations, with partners and associates, extremely stratified. Together with these changes, it could be noted a division between the traditional legal areas and the new ultra specialized sectors. Coincidentally with such division was the entrance of women in market usually to replace men at the so called "traditional legal jobs", which men were leaving to assume new areas.

As long as the female entrance on the legal career took place at the same time as the creation of new legal areas, more specialized and more profitable, there was no resistance to admit women at law firms, since they assume the "old" areas. In this context and according to the International Labour Organization, women who find a job are often restricted to work in "the less productive sectors of economies and in status groups that carry higher economic risk (...)" (ILO, 2008).

In Brazil, could be observed a continuous increase of the female registries before the Brazilian Bar Association. According to said Association, during 2006, there were 312.734 male lawyers and 248.085 female lawyers, what means 56% of male to 44% of female. However, during the last three years, the number of female lawyers had overcome male's rates. Nowadays there are 35.873 females to 32.763 males (52% to 48%) (BONELLI *et al.*, 2008). There is a commonplace idea that it is question of time to women achieves the top jobs on legal system, in order to equalize this sector, but there are countries, as the United States, in which it never happened until now.

Before beginning the theory concerning this issue, it would be an interesting exercise to explore in a very quick manner the actual gender situation of the partners of the biggest law firms in Latin America. According to a research organized by the Institute of Latin Lawyers<sup>(1)</sup>, it is possible to observe the following percentage of partners of the Latin American Law firms:

(1) To see the original list, access: <<http://www.latinlawyer.com/article.php?id=11495>>.



Law Firms	Partner
Argentina	12%
Brazil	24%
Bolivia	30%
Central America	22%
Chile	2%
Colombia	18%
Ecuador	9%
Mexico	8%
Paraguay	21%
Peru	7%
Uruguay	32%
Venezuela	22%

By observing these numbers it is possible to assume that women are underrepresented on the partnership of the biggest law firms. Besides that, according to a research organized by professor Maria da Gloria Bonelli from the Federal University of São Carlos, Brazil, it was observed that between Brazilian lawyers there is a difference of wage, tending to pay less to female workers. (BONELLI *et al.*, 2008). Actually it can be considered as a general tendency: “throughout most regions and many occupations women get less money for the same job” (ILO, 2007). Several researches have been demonstrating that the wage of men, in relation to what is paid to women represents a contrast when compared with the levels of education achieved by female’s professionals. It means that, even if the female are more qualified than men, she probably will receive less than him (SALAS, LEITE, 2007. p. 249).

#### AN OVERVIEW OF WOMEN’S WORK

Most of the major cultures and religions of the world have strongly implemented the idea of devaluation of women’s work. Regardless of the importance of women’s activities, especially for society’s reproduction and survival, it is usually considered as inferior. The western society faced a sexual division, in which men were stimulated to work outside, while women were responsible for the household work. Based on it, employers have structured jobs on the conjecture that all male workers had stay-at-home wives to take care of the domestic issues (PADAVIC, RESKIN, 2002. p. 26).

This assumption would allow employers to control workers, making them work for more time, once they had the obligation of “growing food”, while women were responsible to product their family’s needs. This historical background can explain the ideology created to justify the lower values that society provides to the household work that women usually



do. Work can be defined as the activities that “produce goods and services for one’s own use or in exchange for pay or support” (PADAVIC, RESKIN, 2002. p. 1). This very concept covers two types of work: paid work and unpaid work. Unpaid work is a non-market job usually associated with domestic works and which people perform for themselves or their families.

There is a current belief that only paid work is “real work”, making home works invisible and completely undervalued. By assuming “real work” as paid production there is a clear tendency to ignore all of the work that women and men perform at their home to their families.

As a derivative of this ideology, we have the institution of the “billable hours regime”, which requires lawyers to work night and day, by a system of “minute by minute productivity” in order to charge clients accordingly. This system only could be successfully implemented by men and women accepting the idea of the devaluation of household life. There is also an occult thought that male worker should have their wives to manage their family issues, while female workers are supposed to handle paid work with their house’s non-paid work. This initiative obstruct men to find more meaning out of their firm’s lives, causing in a medium or long term a feeling of depression and dissatisfaction. And impose a sort of an “option” to women, once they will not be able to control their families and keep working on an overtime regime (O’BRIEN, 2006).

#### A) OCCUPATIONAL SEGREGATION AND THE “GLASS CEILING PHENOMENON”

The concept of occupational segregation according to a technical report of the Inter-American Development Bank is that “it occurs when a group is overrepresented in some occupations and underrepresented in others” (DEUTSCH *et al.*, 2002. p. 1). Workplaces can be segregated by race, ethnicity, age and sex, and also segregation can take place horizontally or vertically. Horizontally when the segregation happens between workers in the same positions and vertically when it can be observed as the exclusion of determined race, sex or ethnicity on the hierarchical levels of the workplace.

Nowadays, law firms are the stage of an easily observed kind of vertically sex segregation, also called as glass ceiling phenomenon. Female lawyers are more concentrated in midlevel ranks positions and supervise fewer subordinates than men. There are some authors who affirm that “discrimination is not the only source of segregation” (DEUTSCH *et al.*, 2002. p. 1), the other sources that provide this inequality would also be parental support and educational backgrounds. It is a commonplace the argument that women choose customarily “female jobs”, without any perspective of promotions and with lower wages because “unlike men, they are not primarily oriented to career success”. And that this lack of ambition would directly interfere on their productivity (PADAVIC, RESKIN, 2002. p. 51).

Another argument usually applied by employers is the “natural differences” between women and men, turning women into a more vulnerable professional to turnover process,



especially related with motherhood. In order to develop these arguments, social scientists and economists formulated two theories attempting to explain the complex sex segregation at workplaces, which are: the “Human capital theory” and the “Gender-role socialization theory”.

### *1) THE HUMAN CAPITAL THEORY*

This theory assumes that “labor markets operate in a nondiscriminatory fashion, rewarding workers for their productivity” (PADAVIC, RESKIN, 2002, p. 51). Hence, according to this theory the difference between the positions occupied by female and male workers would be a result of their individual education, training, and experience.

And the explanation for the female underrepresentation on the top level positions of the law firms would be that male lawyers invest more in their human capital, in a way that these investments improve their productivity. According to the International Labour Organization although young women are more likely to be able to read and write than 10 years ago, there is still a gap between female and male education levels and “there is considerable doubt that women get the same chances as men to develop their skills throughout their working lives” (ILO, 2007).

Before accept or reject this theory, we should build a reflection in line to distinguish choices from opportunities (DEUTSCH *et al.*, 2002, p. 1). History demonstrates several effective exclusionary strategies to prevent women from obtaining the necessary qualifications for what are considered male dominated jobs (PADAVIC, RESKIN, 2002, p. 44). Into the category of “traditionally male occupations”, could be mentioned lawyers, judges, attorneys or any other professional related with legal work. In some countries, as United States, women were not even allowed to be enrolled with the bar association until 1970 (BONELLI *et al.*, 2008).

In Brazil, from the very begging, during the period of colonization, women, slaves and first-born were not allowed to study, it was a patriarchal society based on the *latifundium* and slave work (ROMANELLI, 1980, p. 33). Several years latter, especially during last century, in developed countries as United States, cases where female students were simply rejected for a faculty position based exclusively on the gender characteristic were typical.

The academic environment can be effectively shared by both genders, but the real professional set up depends on the access to the powerful groups, that would have the social function to mentor or inspire the young professionals. (BONELLI *et al.*, 2008). As long as there are few women at the top of law related professions, the young female may have more difficulty to perform their network connections. Moreover for women to put their hands on the levers of power, they would have to “hook” new clients and increase their billable hours’ regime, what usually is done into the big law firms between “male playgrounds”. As a result, the major problem is no longer the qualification of women, but the male’s social link that constitutes a chain of clients and professionals restricted by a gender basis division.



## II) *THE GENDER-ROLE SOCIALIZATION THEORY*

This theory recognizes that there is a social process by which families, peers, schools, workplaces and the media labels activities and aspirations as appropriate for one sex and other (KIMMEL, 2000, p. 122 in PADAVIC, RESKIN, 2002, p. 53). Even the socialization contributes to men and women to hold different values, like a stereotype of their principles and aspirations. This dogma derives from the idea of sex stereotypes, in which attributes and skills can be formulated as part of the gender ideology. As an illustration, Western culture stereotypes men as assertive and competitive, what conducts to the idea that men as combative lawyers win more cases, thus men would naturally outdo women at arguing cases before the court (PADAVIC, RESKIN, 2002, p. 43).

After all this social understanding, employers feel comfortable to not provide promotion opportunities to women, always leaving them to positions where “turnover wouldn’t be a problem” (PADAVIC, RESKIN, 2002, p. 50). The main fact associated with women turnover is motherhood, what according to employers “would cause women to miss more work than men or would lead to higher turnover rates” and because of this well spread ideology, female lawyers are constantly pushed because of the false belief that employing women would reduce profits as they are more costly to employ.

Based on this “social tendency” to include men and women in a previous defined role, many employers assume that women are temporary workers who may quit when they are needed at home, concluding that employed women are not committed to their careers (PADAVIC, RESKIN, 2002, p. 41). From that kind of assumption that society (including women) take for granted that employers prefer male professionals to assign for higher positions where turnover would be a problem.

## B) *SEX STEREOTYPES AND GENDER*

The concept of “natural differences” between men and women are beyond their biological distinction. While biological sex depends on a person’s genetics, gender is a social classification which overstates sex distinction. A great example of such overstatement are the clothes for babies, which until the beginning of the twentieth century, male and female infants were dressed identical. Just at the very moment that Americans began a movement of color coding babies’ clothes, is that boys began to be dressed in pink and girls in blue. And just after 1950 is that this imperative reversed. Another interesting example is the maids and housekeepers professionals, who are strongly women in the western society, but which in Angola and India are 50% men (PADAVIC, RESKIN, 2002, p. 4-8).

Thus, there is no “natural differences” that could explain the sex segregation movement, but just the gender ideology as a primitive movement that still remains. Nowadays the proportion of sex inequalities at work caused by sex stereotypes depends hugely on the employers’ actions. The way that employers assign workers to their jobs, promote them or set pay is largely the basic channel to support or avoid any kind of discrimination.





It could be said that law firm's, as several other workplaces, usually has a sex basis division that can be observed just by their attitudes. With the internet era, e-mails are the most common way that lawyers use to communicate between themselves, and this could be quoted as a great example of sex division. As long as most of the partners of the biggest law firms are male, they clearly turn a blind eye to sexual materials which are emailed at workplace. Famous emails, like the one which stresses "Why a beer is better than a woman?" always try to remind woman as sex objects and not as work colleagues. These group emails, as well as the "male languages" used into the workplace help to gender the firm. But not only the blind eye of employers helps to construct gender at work, also the necessity of male lawyers to create a slang code between them and between most of the male clients which normally acts as a gender identity to exclude female lawyers of their conversations.

Another interesting observation regarding sex basis discrimination is the position of the female workers, who usually defend conventional gender roles and collaborate to promote it. In addition, it is very common that when these women are in a decision-making position, they are likely to repeat male's positions and normally use their power to exclude other women to occupy powerful positions (PADAVIC, RESKIN, 2002, p. 44).

#### *I) THE MISCONCEPTION OF MOTHERHOOD*

The strongest reason employers tend to discriminate against women is the false assumption that female lawyers would reduce profits because they are more costly to employ. The belief that women will lead to higher turnover rates because of motherhood has created the wrong idea of female as less productive workers. At the law firms environment we still have a very strong "maternal wall" (O'BRIEN, 2006), which is a popular designation to the situation of female lawyers that return to firms after having babies and who are automatically considered among male and female partners as less productive and less capable of work hard.

The image of the obsessed-career lawyer has been losing steam in recent years, once that women and men are trying to be more real-life workers and trying to juggle careers and children. As long as the consequences of motherhood, at least during pregnancy, are not the same to women as to men, maybe is time to look for alternative assignments in order to accommodate motherhood with a successful career. But the very question is: how far an employer could go to accommodate motherhood and reduce the glass ceiling effect?

Many male lawyers would say that it is just a question of natural adaptation to business and that promoting a program of reduced-hour jobs would not fit in the idea of billable-hours. But, why not? When asked about why women are so underrepresented at the top-level positions at the biggest law firms, the partners would say that none of the middle-level workers were fired, but that they were just expected to work like all the other under equal opportunities.

Maybe the biggest problem of such workplaces is to define a profile of worker that only could be filled by a male professional. This profile especially includes work overtime and the non-acceptance of provisionally turn-over. Both characteristics would exclude





a woman if she had the intention to fit in motherhood idea. From the moment that a lawyer's pregnancy or even motherhood cannot be handled as part of her professional life, this profession will be restricted to male and to a reduced number of women that will abdicate it.

## CONCLUDING REMARKS

1. Rousseau and Kant were the pioneer's western authors to discuss the policy of dignity. To the western civilization the promotion of dignity has to be done by enforcing homogeneity (TAYLOR, 1994, p. 64-65). However this homogenization process may cause some big disparities on real life. By simply including homogeneity at workplace, women would be treaty exactly like men, giving them the same rights and duties. But, as long as they have their peculiarities, one of them necessarily will not enjoy the same treatment, because he or she will not be able to fit in this same profile.

2. The question is beyond genders stigmatization, it is biological. Do not consider pregnancy as part of a female professional life is not the best solution to promote female dignity. Thus to broke with the glass ceiling effect at the law firms would be necessary to develop policies to include women into the profile to be wanted and not expect women to accept the male profile usually imposed to them.

3. The continuous lack of preservation of women's sexual identity has been creating a complex cycle of exploitation and oppression. It is really common to see the explicit diminution of women's values and the depreciation of their work.

4. It is necessary to develop mechanisms that permit the complete adaptation of women to their career, changing considerably the workplaces situation. It is time to Law firms and other likely workplaces initiate policies to retain women. The costs of turnover and of women leaving tend to increase by considering that, at least in Latin America, there are more graduated female lawyers them men.

5. Flexible working schedules, leadership development, career planning programs, sabbatical programs to allow women and men who temporarily quit the firm to raise children have an easier re-entering to the work force are some of the ideas to be discussed and implemented.

6. Besides that, it is important to reflect if this segregation is more a question of women's cultural self-understanding than men's imposition. Maybe if women develop a collective idea of them as a group, it would directly affect the self-understanding of men, turning the commitment to career and family a possible combination to both and not an either/or decision.

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